

These are the tentative rulings for civil law and motion matters set for Thursday, October 30, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 29, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

**NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0058970      Wilson, Diana vs. Gagni, Joly**

The motion to set aside default judgment is continued to December 4, 2014 at 8:30 a.m. in Department 43 at the request of the moving party.

**2. S-CV-0022800      Martinez-Senftner Law Firm, et al vs. Alcaraz, Lilia G.**

Defendant/Cross-Complainant's Motion to Tax Costs

The motion is granted in part and denied in part. Upon a challenge to a verified cost memorandum, the burden is upon the party opposing the costs to show they were not reasonable or necessary. (*Ladas v. California State Auto. Assn. (1993) 19 Cal.App.4th 761, 774; Nelson v. Anderson (1999) 72 Cal.App.4th 111, 131.*) Costs that are properly objected to are put in issue, shifting the burden to the party claiming such costs. (*Ladas v. California State Auto. Assn., supra; Fennessy v. DeLeuw-Cather Corp. (1990) 218 Cal.App.3d 1192, 1195-1196.*) Upon review, the moving party has sufficiently put the costs in issue to shift the burden. The opposing party has not sufficiently established the majority of the costs and the cost memo is taxed as to the following costs:

Item 4	Deposition costs of \$19,522.81
Item 8a(3)	Witness fees for Sac Metro Fire of \$150.00
Item 13	Other costs of \$2,754.59

The motion is denied as to the \$75.00 in jury fees. In sum, the opposing party's cost memo is taxed in the amount of \$22,427.40.

Plaintiff/Cross-Defendant's Motion to Tax Costs

The motion is granted. The request for judicial notice is granted. Upon a challenge to a verified cost memorandum, the burden is upon the party opposing the costs to show they were not reasonable or necessary. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774; *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Costs that are properly objected to are put in issue, shifting the burden to the party claiming such costs. (*Ladas v. California State Auto. Assn.*, *supra*; *Fennessy v. DeLeuw-Cather Corp.* (1990) 218 Cal.App.3d 1192, 1195-1196.) Upon review, the moving party has sufficiently put the subject costs in issue to shift the burden. The opposing party has not sufficiently established the challenged costs and the memo is taxed as to the following costs:

Item 8c	Expert witness fees for Dr. J. Greene, M.D. of \$9,750.00
Item 13	Other costs of \$3,566.99

The cost memo is taxed in the amount of \$13,316.99.

**3. S-CV-0027264            JB Development, LLC vs. Brelle West Const. Mgmt., et al**

The motion to strike/tax costs is continued, on the court's own motion, to November 6, 2014 at 8:30 a.m. in Department 40. The court apologizes to the parties for any inconvenience.

**4. S-CV-0032596            Azevedo, Richard J. Trustee, et al vs. Kutzman, Michael T.**

Plaintiff's Motion for Preliminary Injunction

Ruling on Objections

Defendant's August 21, 2014 objections nos. 1, 2, 7, 13, 14, 15, 16 are overruled. Defendant's August 21, 2014 objections nos. 3, 4, 5, 6, 8, 9, 10, 11, 12, 17 are sustained.

Defendant's August 29, 2014 objections nos. 1, 2, 8, 9, 14, 15, 16, 18 are overruled. Defendant's August 29, 2014 objections nos. 3, 4, 5, 6, 7, 10, 11, 12, 13, 17 are sustained.

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted except as to the documents where objections were sustained.

Defendant's request for judicial notice is granted.

### Ruling on Motion

The motion is denied. The court may grant a preliminary injunction when it appears from the complaint that the plaintiff is entitled to the demanded relief and the plaintiff would suffer irreparable injury if the enjoined action were allowed to proceed. (CCP§526(a).) When determining whether to issue a preliminary injunction, the court weighs the likelihood of whether the moving party will prevail on the merits and the relative interim harm to the parties from the issuance or non-issuance of the injunction. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 999-1000.) The plaintiff has the burden of showing he/she would be harmed if the preliminary injunction were not granted. (*Casmalia Resources, Ltd. v. County of Santa Barbara* (1987) 195 Cal.App.3d 827, 838.) Plaintiff, however, has failed to meet his burden in this case.

First, plaintiff has not sufficiently established that the UFTA applies. A fraudulent conveyance under the UFTA involves “ ‘a transfer by the debtor of property to a third person undertaken with the intent to prevent a creditor from reaching that interest to satisfy its claim.’ ” (*Kirkeby v. Superior Court* (2004) 33 Cal.4th 642, 648.) “A transfer made ... by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made ..., if the debtor made the transfer ... as follows: [¶] (1) With actual intent to hinder, delay, or defraud any creditor of the debtor ....” (Civil Code §3439.04(a).) A creditor's remedies are outlined in Civil Code §3439.07(a), which include avoidance of a transfer, attachment, and the equitable remedies of injunction and receivership as well as “[a]ny other relief the circumstances may require.” A transfer, however, is not voidable against a person “who took in good faith and for a reasonably equivalent value or against any subsequent transferee ....” (Civil Code §3439.08(a).) Plaintiff has not sufficiently established himself as a “creditor” as contemplated under the UFTA. Even if such a showing had been made, plaintiff still fails to sufficiently establish the existence of any transfer of property with the intent to prevent him from reaching the interest to satisfy any purported claim owed to plaintiff.

Second, plaintiff has not sufficiently established an irreparable harm so that the hardships of the parties balance in his favor. Ultimately, plaintiff's harm amounts to a difficulty in the recoupment of potential monetary damages. The harm to plaintiff does not outweigh the harm to defendant caused by the intrusive nature of the request, which will restrict his personal financial activities and require he provide an accounting on a claim that has yet to be determined.

Third, plaintiff has not sufficiently established that he will prevail on the merits of his claim. All of his causes of action stem from alleged legal malpractice on the part of defendant. The documentary evidence does not sufficiently establish the claims alleged in the operative pleading and there is an absence of sufficient supporting declarations that warrant granting the preliminary injunction.

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**5. S-CV-0032666            LaPierre, Maureen vs. Gonzalez, Efrain, M.D., et al**

R. Wesley Pratt's Motion to be Relieved as Counsel for plaintiff is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon plaintiff.

**6. S-CV-0032754            Balko, Kathleen, et al vs. Beazer Homes Holdings Corp.**

Cross-Defendant Sacramento A-1 Door's Motion for Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

Cross-Defendant Alcal Specialty Contracting, Inc.'s Motion for Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

**7. S-CV-0032864            Kover, Beckie Jean, et al vs. Sutter Medical Center, et al**

The two motions for summary judgment are continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**8. S-CV-0032790            Singh, Rebecca, et al vs. Gurnee & Daniels, LLP**

Defendant's Motion for Leave to Amend Answer

The motion is granted. The request for judicial notice is granted. Defendant shall file and serve its amended answer on or before October 31, 2014.

Defendant's Motion to Stay All Proceedings and Vacate Trial

The motion is granted. The current action is stayed pending resolution of the appeal pending before the Third District Court of Appeal in *Gurnee et al. v. Singh, et al.*, case no. C077366. The trial and all related dates are vacated. The matter is set for an OSC re Status of Appeal on April 28, 2015 at 11:30 a.m. in Department 40.

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**9. S-CV-0032934            Amsbaugh, Brian, et al vs. Kaiser Permanente, et al**

Plaintiffs' Motion to Compel Further Responses to Plaintiffs' Production Demand

The motion is denied. The request for sanctions is denied.

Plaintiffs' Motion for Order Compelling Limited Inspection

The motion is denied in its entirety.

**10. S-CV-0033230            Crooke, John vs. Crossmark, Inc., et al**

Defendants' Demurrer to the First Amended Complaint (FAC)

Ruling on Request for Judicial Notice

The request for judicial notice is denied.

Ruling on Demurrer

The demurrer is overruled. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A review of the FAC demonstrates that when the allegations in the FAC are read as a whole, the sixth and seventh causes of action are sufficiently pled.

Defendants shall file and serve their answer or general denial on or before October 31, 2014.

**11. S-CV-0033568            Brown, Nicholas, et al vs. Brookview Ventures, LLC**

Defendant/Cross-Complainant Brookview Ventures' Motion to Serve Select Cross-Defendants Through the California Secretary of State is granted. The moving party may serve cross-defendants Ahling Fireplace Products, Inc.; Arctic Heating and Air, Inc.; G.R. Grading & Excavation, Inc.; SDC Construction, Inc.; and Shamblin Contractors, Inc. through the California Secretary of State.

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Plaintiffs' Motion to Modify OrdersPreliminary Matters

As an initial matter, the court notes that the parties engaged in filing an inordinate amount of unsolicited briefing beyond that authorized by the court, statute, and the Rules of Court. The court declines to consider any of the additional briefing filed after October 2, 2014 and admonishes both parties to refrain from filing any future briefing without first obtaining leave from the court. The court also declines to consider the new documentary evidence submitted in support of plaintiffs' reply papers.

Ruling on Objections

Defendants' objections nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, are overruled.

Ruling on Request for Judicial Notice

Plaintiffs' request for judicial notice is granted.

Ruling on Motion

Plaintiffs' Motion to Modify Orders Regarding Appointment of Disinterested Appraisers is denied.

At the outset, the court disagrees with the contention at 6:25-7:14 of the Castricone declaration that the court "invited" the filing of this motion. Rather, on September 9, 2014, in response to plaintiffs' persistent insistence on arguing the subject appointments following issuance of the court's appointment order on July 21, 2014, the court properly observed that consideration of plaintiffs' arguments without a noticed motion would be improper, and offered to set the present law and motion date.

The court finds that this application is untimely under CCP Sec. 1008, and relief on the statutory basis is denied.

The court declines plaintiffs' invitation that the court exercise its discretion to reconsider its interim orders on its own motion. The unverified assertions of the moving papers are insufficient as a matter of law, for that reason, to support discretionary relief. The court declines to consider the unverified statements of fact. Even if these assertions were considered, the same result would obtain: The moving papers largely rehash arguments already made, and already rejected by the court.

The parties are reminded that the appointed appraisers are officers of this court. While this in no way immunizes them or their work product from criticism, it does require that communications with them be conducted in a professional and civil manner.

The parties are admonished that badgering the appraisers as part of an effort to subvert the orders of the court is improper.

**13. S-CV-0033972            Lacy, Carolyn, et al vs. Bank of America, N.A., et al**

The motion for judgment on the pleading is continued, on the court's own motion, to November 13, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**14. S-CV-0034008            ARGA Properties vs. Gold Link Real Estate, et al**

Defendants unopposed Motion to Strike is granted. The references to attorney's fees on pages 4:20-22 and page 7, prayer 3 are stricken as to defendants Gregory Walsh and Gold Link Real Estate.

**15. S-CV-0034010            Beadle, Marva vs. Allied Trustee Services, et al.**

The demurrer is continued, on the court's own motion, to be heard on November 4, 2014 at 8:30 a.m. in Department 32 to be heard by the Honorable Mark S. Curry.

**16. S-CV-0034348            Swearingen, Olga, et al vs. Bank of America, NA, et al**

The OSC re Preliminary Injunction is continued, on the court's own motion, to November 20, 2014 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

**17. S-CV-0034804            Berberich, James, et al vs. Berberich, Joyce G., et al**

Defendant's Demurrer to the First Amended Complaint

The demurrer is sustained. A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) All four causes of action are insufficiently pled and do not provide enough factual allegations to support actions for financial elder abuse; fraud (concealment/intentional misrep); conversion; or negligence.

As to the issue of leave to amend, the demurrer is sustained without leave to amend as to the first cause of action. Plaintiffs have not made a sufficient showing to demonstrate the deficiencies may be cured with an amendment. As to the remaining causes of action, a review of the pleadings demonstrates a possibility that the deficiencies may be cured with an amendment. The demurrer is sustained with leave to amend as to the second, third, and fourth causes of action.

Any amended pleading shall be filed and served on or before November 14, 2014.

Defendant's Motion to Strike the First Amended Complaint

The motion is granted. Paragraphs 37, 38, 63, and 64 are stricken and shall not be included in any amended pleading filed by plaintiffs.

**18. S-CV-0034922            Cerruti, Rick, et al vs. Silver Star Auto Sales**

Defendant's Motion to Compel Arbitration is granted. The case is stayed pending completion of arbitration. The CMC set for November 4, 2014 is vacated. An OSC re status of arbitration is set for January 27, 2015 at 11:30 a.m. in Department 40.

**19. S-CV-0035086            Bradbury, Megan, et al - In Re the Petition of**

The appearances of the parties are required on the petition for minor's compromise. The appearance of the minor at the hearing is waived.

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